

**Before the  
Federal Communications Commission  
Washington, DC 20554**

|   |   |                     |
|---|---|---------------------|
| In the Matter of                            | ) |                     |
|   | ) |                     |
| Request for Review of the                   | ) |                     |
| Decision of the                             | ) |                     |
| Universal Service Administrator by          | ) |                     |
|   | ) |                     |
| New Albany-Floyd County Consolidated School | ) | File No. SLD-264618 |
| Corporation                                 | ) |                     |
| New Albany, Indiana                         | ) |                     |
|   | ) |                     |
| Federal-State Joint Board on                | ) | CC Docket No. 96-45 |
| Universal Service                           | ) |                     |
|   | ) |                     |
| Changes to the Board of Directors of the    | ) | CC Docket No. 97-21 |
| National Exchange Carrier Association, Inc. | ) |                     |

**ORDER**

**Adopted: May 10, 2002**

**Released: May 13, 2002**

By the Wireline Competition Bureau:

1. The Wireline Competition Bureau (Bureau) has under consideration a Request for Review filed by New Albany-Floyd County Consolidated School Corporation (New Albany), New Albany, Indiana.<sup>1</sup> New Albany seeks review of the decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying funding of New Albany's Funding Year 4 application for discounts under the schools and libraries universal service mechanism.<sup>2</sup> For the reasons set forth below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The Commission's rules provide that, with one limited exception for existing, binding contracts,

<sup>1</sup> *Request for Review of the Decision of the Universal Service Administrator By New Albany-Floyd County Consolidated School Corporation*, CC Docket Nos. 96-45 and 97-21, Request for Review, filed October 22, 2001 (Request for Review).

<sup>2</sup> *See* Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting services.<sup>5</sup> The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 including signed certifications required under program rules and requesting support for the services ordered by the applicant.<sup>6</sup> Further, the instructions for the FCC Form 471 state that the date of signature for the Block 6 certification page of the FCC Form 471 "CANNOT be earlier than any Allowable Vendor Selection/Contract Date you cited" in any funding request.<sup>7</sup>

3. New Albany posted its FCC Form 470 on December 19, 2000.<sup>8</sup> It signed its FCC Form 471 on January 12, 2001, prior to the end of the 28-day period and filed the application on January 17, 2001.<sup>9</sup> On July 23, 2001, SLD issued a Funding Commitment Decision Letter, denying funding on New Albany's one funding request, Funding Request Number (FRN) 671062, on the grounds that "[t]he Form 471 was signed and/or submitted prior to the expiration of the 28-day waiting period from the day of the posting of the Form 470 to the SLD Web Site."<sup>10</sup> New Albany appealed, conceding that the FCC Form 471 had been signed prior to the expiration of the 28-day period, but asserting that the actual contract for service at issue in FRN 671062 had been signed after the expiration of the 28-day period and that New Albany had therefore complied with competitive bidding requirements.<sup>11</sup> As evidence, New Albany pointed, *inter alia*, to the information supplied in FRN 671062 on the application, which specified that the contract award date was January 16, 2001, and thus after the expiration of the 28-day period.<sup>12</sup>

4. On October 1, 2001, SLD denied the appeal.<sup>13</sup> It reiterated that New Albany had signed its FCC Form 471 prior to the expiration of the 28-day waiting period, and in doing so,

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<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>5</sup> See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

<sup>6</sup> 47 C.F.R. § 54.504(c); see Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

<sup>7</sup> Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (FCC Form 471 Instructions), at 25.

<sup>8</sup> FCC Form 470, New Albany Floyd County School Corporation, filed December 19, 2000.

<sup>9</sup> FCC Form 471, New Albany Floyd County Schools Corporation, filed January 17, 2001 (New Albany Form 471).

<sup>10</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Roger Whaley, New Albany Floyd County Schools Corporation, dated July 23, 2001, at 6.

<sup>11</sup> Letter from Roger E. Whaley, New Albany Floyd County Schools Corporation, to Schools and Libraries Division, Universal Service Administrative Company, filed August 6, 2001, at 1.

<sup>12</sup> *Id.*

<sup>13</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Roger Whaley, New Albany Floyd County Schools Corporation, dated October 1, 2001 (Administrator's Decision on Appeal).

failed to comply with the competitive bidding requirement that the FCC Form 470 be posted 28 days prior to the signing or submission of the FCC Form 471.<sup>14</sup> New Albany then filed the pending Request for Review.

5. After reviewing the record, we affirm SLD's decision. As noted above, SLD's application instructions expressly prohibit applicants from signing the certification page prior to the expiration of the 28-day waiting period.<sup>15</sup> New Albany concededly violated this prohibition in connection with its one funding request. SLD was therefore correct to deny funding.

6. New Albany's argument that it did not sign the contract until later does not alter this conclusion. The contract award date of January 16, 2001 specified in the FRN does provide evidence that New Albany did not sign its service contract until after the 28-day waiting period, and thus, that New Albany did not violate this aspect of the Commission's competitive bidding regulations.<sup>16</sup> However, it does not demonstrate that New Albany complied with the prohibition against signing the FCC Form 471 prior to the expiration of the waiting period.

7. The Commission's regulations authorize SLD to establish rules and procedures for the administration of the schools and libraries support application process in an efficient and effective manner, including measures to ensure compliance with the Commission's rules and regulations.<sup>17</sup> We find that imposing a prohibition against signing the FCC Form 471 certification page prior to the end of the 28-day waiting period is a reasonable procedure to ensure compliance with the Commission's competitive bidding requirements.

8. The Commission's regulations require not merely that an applicant wait 28 days before making a service commitment, but that it carefully consider all service bids offered during this period.<sup>18</sup> When an applicant signs the certification page, which includes certifications requiring knowledge of the services purchased, the applicant has, in effect, chosen one provider over all other bidders. Thus, the applicant is no longer considering additional bids. As a result, signing the page before the end of the 28-day waiting period demonstrates that the applicant has not fully complied with the competitive bidding requirements.

9. Conversely, if we were to assume that an applicant signed the certification page prior to making its service selections, then the certifications themselves would be untruthful. As noted above, the certifications require knowledge of the services requested, and therefore, if an applicant makes the certifications before the services are contracted for, the validity of those certifications is unreliable. For example, the signing party must certify that he or she has examined the request, which would be impossible until the services to be requested have been

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<sup>14</sup> *Id.* at 1-2.

<sup>15</sup> *See supra*, para. 2.

<sup>16</sup> *See* New Albany Form 471.

<sup>17</sup> *See* 47 C.F.R. §§ 54.701(a), 54.702, 54.705(a)(iii).

<sup>18</sup> 47 C.F.R. § 54.511(a); Administrator's Decision on Appeal, at 2.

determined.<sup>19</sup> Further, the signing party must certify that the eligible schools and libraries have the necessary resources to make effective use of the services requested, which again cannot be known with certainty until the services are actually contracted for.<sup>20</sup> In addition, the applicant must certify that the entities it represents have complied with all program rules.<sup>21</sup> However, it is impossible for an applicant to know that the 28-day waiting period for signing contracts has been satisfied until after that 28-day period has expired, and thus, this certification is also put in question where an applicant certifies before the end of the 28-day period. We therefore find that SLD appropriately requires applicants to wait 28 days before signing the certifications. Because New Albany concededly did not comply with this requirement, we deny the Request for Review.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by New Albany-Floyd County Consolidated School Corporation, New Albany, Indiana, on October 22, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Wireline Competition Bureau

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<sup>19</sup> FCC Form 471, Block 6, Item 33.

<sup>20</sup> FCC Form 471, Block 6, Item 25; *see also* FCC Form 471 Instructions, at 24 (instructing applicants to check Item 25 to indicate that entities have the necessary resources for the “eligible services you have requested in Block 5”).

<sup>21</sup> FCC Form 471, Block 6, Item 30.